



BILLING CODE: 3510-DS-P

DEPARTMENT OF COMMERCE

International Trade Administration

[A-570-970]

Multilayered Wood Flooring from the People's Republic of China: Notice of Court Decision Not in Harmony With the Second Amended Final Determination and Notice of Third Amended Final Determination of the Antidumping Duty Investigation

AGENCY: Enforcement and Compliance, International Trade Administration, Department of Commerce.

SUMMARY: On July 3, 2018, the United States Court of International Trade (CIT or Court) entered its final judgment in *Changzhou Hawd Flooring Co., et al. v. United States*, sustaining, in part, the final results of remand redetermination pursuant to court order by the Department of Commerce (Commerce) pertaining to the less-than-fair-value (LTFV) investigation on multilayered wood flooring from the People's Republic of China (China). Commerce is notifying the public that the final judgment in this case is not in harmony with Commerce's final determination in the LTFV investigation of multilayered wood flooring from China. Pursuant to the CIT's final judgment, Dunhua City Jisen Wood Industry Co., Ltd., Fine Furniture (Shanghai) Limited, and Armstrong Wood Products (Kunshan) Co., Ltd. are being excluded from the order.

DATES: Applicable July 13, 2018.

FOR FURTHER INFORMATION CONTACT: Aleksandras Nakutis, Office IV, Enforcement and Compliance, International Trade Administration, U.S. Department of

Commerce, 1401 Constitution Avenue, NW, Washington, DC, 20230; telephone: (202) 482-3147.

SUPPLEMENTARY INFORMATION:

Background

The litigation in this case relates to Commerce's final determination in the antidumping duty investigation covering multilayered wood flooring from China,¹ which was later amended.² In the *First Amended Final Determination and Order*, Commerce assigned a rate of 3.30 percent to all separate rate respondents.³ Commerce derived this rate by averaging the rates of the two individually investigated respondents with weighted-average margins above *de minimis*, pursuant to section 735(c)(5)(A) of the Tariff Act of 1930, as amended (the Act). Pursuant to a series of remand orders issued by the Court that resulted in five remand redeterminations, Commerce (1) revised its calculation of dumping margins for two mandatory respondents and the China-wide entity; and, (2) made certain findings regarding the dumping margins that were calculated for eight separate rate respondents that were plaintiffs in the litigation.

Regarding the dumping margins for two mandatory respondents in the investigation, on April 23, 2014, the Court granted a consent motion for severance and entered final judgment in *Baroque Timber Industries (Zhongshan) Company, Limited v. United States* with respect to Layo Wood and the Samling Group.⁴ Consistent with the decision of the United States Court of Appeals for the Federal Circuit (CAFC) in *Timken Co. v. United States*, 893 F.2d 337 (Fed. Cir.

¹ See *Multilayered Wood Flooring from the People's Republic of China: Final Determination of Sales at Less Than Fair Value*, 76 FR 64318 (October 18, 2011) (*Final Determination*).

² See *Multilayered Wood Flooring from the People's Republic of China: Amended Final Determination of Sales at Less Than Fair Value and Antidumping Duty Order*, 76 FR 76690 (December 8, 2011) (*First Amended Final Determination and Order*).

³ *Id.*

⁴ The full names of those companies are Zheijiang Layo Wood Industry Co. Ltd. (Layo Wood) and Baroque Timber Industries (Zhongshan) Co., Ltd., Riverside Plywood Corporation, Samling Elegant Living Trading (Labuan) Limited, Samling Global USA, Inc., Samling Riverside Co., Ltd., and Suzhou Times Flooring Co., Ltd. (collectively Samling Group).

1990) (*Timken*), as clarified by *Diamond Sawblades Mfrs. Coalition v. United States*, 626 F.3d 1374 (Fed. Cir. 2010) (*Diamond Sawblades*), Commerce gave notice of this decision, as well as the amended dumping margins of zero percent calculated for Layo Wood and Samling Group.⁵ Further, because Commerce changed the surrogate values in its first remand redetermination for mandatory respondents Layo Wood and Samling Group,⁶ the highest calculated transaction-specific rate on the record became 25.62 percent, which Commerce assigned to the China-wide entity.⁷ The CIT sustained Commerce's remand redetermination as it pertained to Layo Wood and Samling Group.⁸ Consequently, pursuant to section 735(a)(4) of the Act and 19 CFR 351.204(e)(1), Commerce excluded Layo Wood and Samling Group from the *Order*.⁹

Commerce was subsequently remanded by the CIT¹⁰ and the CAFC¹¹ to revise its determination of the separate rate. Specifically, in its third remand redetermination, Commerce assigned seven of the eight separate rate respondents, which were plaintiffs in the litigation, an unspecified above *de-minimis* rate.¹² In the fourth remand redetermination, Commerce assigned

⁵ See *Multilayered Wood Flooring from the People's Republic of China: Notice of Court Decision Not in Harmony With the Final Determination and Amended Final Determination of the Antidumping Duty Investigation*, 79 FR 25109 (May 2, 2014) (*Second Amended Final Determination*).

⁶ See Final Results of Redetermination Pursuant to Court Order, *Baroque Timber Industries (Zhongshan) Company, Limited, et al. v. United States*, dated November 14, 2013 (First Remand Redetermination), at 2-3.

⁷ *Id.*

⁸ See also *Baroque Timber Indus. (Zhongshan) Co. v. United States*, 971 F.Supp.2d 1333, 1336 (Ct. Int'l Trade 2014).

⁹ See First Remand Redetermination, dated November 14, 2013. On May 23, 2014, Commerce provided liquidation instructions to U.S. Customs and Border Protection (CBP) for both Layo Wood and Samling Group explaining that Commerce has determined that merchandise produced and exported by Layo Wood and Samling Group are "excluded from the antidumping duty order on multilayered wood flooring from {China}." See CBP Message from Commerce, "Liquidation instructions for multilayered wood flooring from the People's Republic of China ("PRC") produced and exported by Zhejiang Layo Wood Industry Co., Ltd. (A-570-970-001)," dated May 23, 2014, Message Number 4143303; see also CBP Message from Commerce, "Liquidation instructions for multilayered wood flooring from the People's Republic of China ("PRC") produced and exported by the Samling Group (A-570-970-002)," dated May 23, 2014, Message Number 4143304.

¹⁰ See *Changzhou Hawd Flooring Co. v. United States*, 77 F. Supp. 3d 1351 (Ct. Int'l Trade 2015) (*Changzhou Hawd* 2015).

¹¹ See *Changzhou Hawd Flooring Co. v. United States*, 848 F.3d 1006, 1008 (Fed. Cir. 2017) (*Changzhou Hawd* 2017).

¹² See Final Results of Redetermination Pursuant to Court Order, *Changzhou Hawd Flooring Co., Ltd., et al. v. United States*, dated October 16, 2014 (Third Remand Redetermination). Commerce inferred that the margins of the

the eighth separate rate plaintiff, Changzhou Hawd Flooring Co., a cash deposit rate consistent with the other separate rate plaintiffs, until Changzhou Hawd's new cash deposit and assessment rate was established in the final results of the second administrative review.¹³

The CIT sustained Commerce's determinations; however, the CAFC vacated the CIT's judgment and remanded back to the CIT with instructions to remand to Commerce to revise its determination of the separate rate and apply the "expected method" under section 735(c)(5) of the Act, or to justify any departure.¹⁴ In its fifth remand redetermination, Commerce was unable to make the necessary findings to justify departure from the expected method, and thus applied the expected method for the separate rate, averaging the calculated rates for the mandatory respondents, resulting in a zero rate.¹⁵ Commerce further determined that the relevant statutory and regulatory provision, section 735(a)(4) of the Act and 19 CFR 351.204(e)(1), did not provide a basis for excluding from the order producers that were not individually investigated and assigned individual dumping margins. Commerce also denied a request to terminate the order completely for lack of any individually calculated dumping margins above *de minimis*.

On July 3, 2018, the CIT sustained, in part, Commerce's fifth remand redetermination.¹⁶ The CIT sustained Commerce's determination not to terminate the order because the order was imposed, in part, based on indirect evidence of dumping by the China-wide entity, a finding

separate rate plaintiffs were above-*de minimis* in the second remand redetermination. Commerce based this inference on two primary considerations. First, Commerce observed that 110 companies did not respond to the quantity and value questionnaire, that certain of those companies could have been selected as mandatory respondents, and that it is reasonable to infer those companies would have received above-*de minimis* rates. Second, Commerce corroborated this inference using the intervening results of the first administrative review, where Commerce found continued dumping. See Final Results of Redetermination Pursuant to Court Order, *Baroque Timber Industries (Zhongshan) Company, Limited, et al. v. United States*, dated May 30, 2014 (Second Remand Redetermination).

¹³ See Final Results of Redetermination Pursuant to Court Order, *Changzhou Hawd Flooring Co., Ltd., et al. v. United States*, dated March 24, 2015 (Fourth Remand Redetermination).

¹⁴ See *Changzhou Hawd 2015*, 77 F. Supp. 3d 1351; *Changzhou Hawd 2017*, 848 F.3d 1006, 1008.

¹⁵ See Final Results of Redetermination Pursuant to Court Order, Court No. 12-00020, dated February 15, 2017 (Fifth Remand Redetermination).

¹⁶ See *Changzhou Hawd Flooring Co., et al. v. United States*, Ct. No. 12-20, Slip Op. 18-82 (Ct. Int'l Trade July 3, 2018).

which was not challenged.¹⁷ With respect to the separate rate plaintiffs, the CIT ordered exclusion from the order for three separate respondents that sought voluntary examination in the investigation, but were denied: Dunhua City Jisen Wood Industry Co., Ltd., Fine Furniture (Shanghai) Limited, and Armstrong Wood Products (Kunshan) Co., Ltd. The CIT held that Commerce’s application of the exclusion regulation, 19 CFR 351.204(e)(1), was arbitrary with respect to these respondents.¹⁸

Timken Notice

In its decision in *Timken*, as clarified by *Diamond Sawblades*, the CAFC held that, pursuant to section 516A(e) of the Act, Commerce must publish a notice of a court decision that is not “in harmony” with Commerce’s determination and must suspend liquidation of entries pending a “conclusive” court decision. The CIT’s July 3, 2018, final judgment affirming the Fifth Remand Redetermination,¹⁹ sustaining the recalculated separate rate of zero (applicable to the separate rate plaintiffs), and ordering the exclusion of Dunhua City Jisen Wood Industry Co., Ltd., Fine Furniture (Shanghai) Limited, and Armstrong Wood Products (Kunshan) Co., Ltd. from the order constitutes a final decision of that court that is not in harmony with the *Second Amended Final Determination*. This notice is published in fulfillment of the publication requirements of *Timken*.

Third Amended Final Determination

There is now a final court decision with respect to the *Second Amended Final Determination* as it concerns the eight separate rate respondents listed below. As of the date of this notice, all eight companies have received updated cash deposit rates, and their rates will not change as a result of this litigation. Accordingly, Commerce is amending the *Second Amended*

¹⁷ *Id.* at 11-12.

¹⁸ *Id.* at 16.

¹⁹ *Id.*

Final Determination. The revised weighted-average dumping margins for these companies are as follows:

Exporter	Weighted-Average Dumping Margin (percent)
Changzhou Hawd Flooring Co.	0.00
Dunhua City Jisen Wood Industry Co., Ltd.	0.00
Dunhua City Dexin Wood Industry Co., Ltd.	0.00
Dalian Huilong Wooden Products Co., Ltd.	0.00
Kunshan Yingy-Nature Wood Industry Co., Ltd.	0.00
Karly Wood Product Limited	0.00
Fine Furniture (Shanghai) Limited	0.00
Armstrong Wood Products (Kunshan) Co., Ltd.	0.00

Further, pursuant to the CIT's July 3, 2018, final judgment, Commerce is also excluding Dunhua City Jisen Wood Industry Co., Ltd., Fine Furniture (Shanghai) Limited, and Armstrong Wood Products (Kunshan) Co., Ltd., from the order. Section 735(c)(2)(A)-(B) of the Act instructs Commerce to terminate suspension of liquidation and to release any bond or other security, and refund any cash deposit, in the event of a negative determination. Here, suspension of liquidation must continue during the pendency of the appeals process (in accordance with *Timken* and as discussed above), and, therefore, we will continue to instruct CBP at this time to (A) continue suspension at a cash deposit rate of zero percent until instructed otherwise; and (B) release any bond or other security, and refund any cash deposit made pursuant to the order by Dunhua City Jisen Wood Industry Co., Ltd., Fine Furniture (Shanghai) Limited, and Armstrong Wood Products (Kunshan) Co., Ltd. In the event that the CIT's ruling is not appealed, or

appealed and upheld by the CAFC, Commerce will instruct CBP to terminate the suspension of liquidation and to liquidate those unliquidated entries of subject merchandise without regard to antidumping duties.

Notification to Interested Parties

This notice serves as a reminder to parties subject to administrative protective order (APO) of their responsibility concerning the disposition of proprietary information disclosed under APO in accordance with 19 CFR 351.305(a)(3). Timely written notification of the destruction of APO materials or conversion to judicial protective order is hereby requested. Failure to comply with the regulations and the terms of the APO is a violation subject to sanction.

This notice is issued and published in accordance with sections 516A(e)(1), 735, and 777(i)(1) of the Act.

Dated: July 18, 2018.

Gary Taverman,

Deputy Assistant Secretary

*for Antidumping and Countervailing Duty Operations,
performing the non-exclusive functions and duties of the
Assistant Secretary for Enforcement and Compliance.*

[FR Doc. 2018-15878 Filed: 7/24/2018 8:45 am; Publication Date: 7/25/2018]